

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TRINITY RUSTON GORE,

Plaintiff,

v.

No. CIV 16-0194 JB/KBM

GERMAN FRANCO and JERRY ROARK,

Defendants.

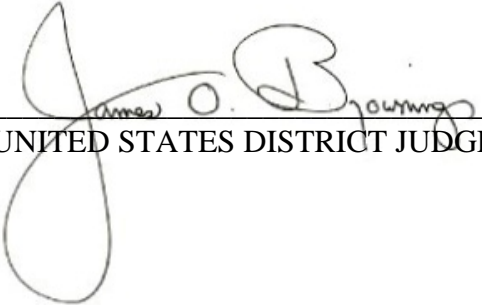
MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS MATTER comes before the Court on the Court's Memorandum Opinion and Order, filed September 27, 2016 (Doc. 9)("MOO"). In the MOO, the Court dismissed Plaintiff Trinity Ruston Gore's Prisoner's Civil Rights Complaint, filed March 14, 2016 (Doc. 1)("Complaint"), without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and granted Gore thirty days to file an amended complaint that states a claim upon which relief may be granted. See MOO at 4. The Court warned Gore that failure to timely file an amended complaint "may result in the dismissal of this action without further notice." MOO at 4.

Gore's amended complaint was due on October 27, 2016. As of this date, Gore has not filed an amended complaint or otherwise responded to the Court's MOO. Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action *sua sponte* "[i]f the plaintiff fails to prosecute or comply with these rules or a court order." Fed. R. Civ. P. 41(b). See Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)(noting that Fed. R. Civ. P. 41(b) "has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or court's orders"). Because Gore has not filed an amended complaint in compliance with the MOO, the Court will, pursuant to rule

41(b), dismiss this action without prejudice.

IT IS ORDERED that this action is dismissed without prejudice, and judgment will be entered.



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

Trinity Ruston Gore
Lea County Correctional Facility
Hobbs, New Mexico

Plaintiff Pro Se

Jerry Roark

Defendant

--and--

German Franco

Defendant